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HUSBAND AND WIFE—IMPOTENCY—RULE OF TRIENNIAL COHABITATION.—Plaintiff and defendant cohabited for five years after marriage, at the end of which time the plaintiff was still a virgin. This petition was brought for an annulment of the marriage on the ground of incurable impotency of the defendant. It was argued that the virginity of the wife raised a *prima facie* presumption of impotency on the part of the husband. *Held*, the annulment was granted. *Tompkins v. Tompkins* (N. J.), 111 Atl. 599. See NOTES, p. 467.

HUSBAND AND WIFE—PERSONAL ACTION AGAINST SPOUSE.—Defendant communicated a loathsome venereal disease to the plaintiff, his wife. The latter claimed this to constitute an assault upon her body, causing serious injury and permanently impairing her earning capacity. She brought this action for damages for such personal injuries. *Held*, the wife can recover. *Crowell v. Crowell* (N. C.), 105 S. E. 206.

Of course the basis of this action is purely statutory, since nothing of the sort could be entertained under the common law doctrine of unity between husband and wife. The North Carolina court here relied on two sections of the State statute law for the decision. The case is of first impression in the State. Under Revisal 1903, § 408 (C. S. § 454), it is provided to the effect that a wife may maintain an action without joining her husband in two cases: (1) when the action concerns her separate property, and (2) when the action is between herself and her husband. By a liberal construction this may give a remedy to the wife for personal damages she may suffer at the hands of her husband.

The above section refers to property rights, but in this jurisdiction the court maintained that injury to the wife's person is a property right, based on a statute of 1913, c. 13, § 1, which provides:

"* * * any damages for personal injuries, or other torts sustained by her [a married woman], can be recovered by her suing alone, and such earnings or recovery shall be her sole and separate property * * *."

It is submitted that even though the damages recovered by the wife be her sole and separate property, that could not convert a purely personal action into a property action.

Under a similar statute in South Carolina, it was recently held that a wife could maintain an action against her husband for wilfully beating her. *Prosser v. Prosser* (S. C.), 102 S. E. 787. Where by statute the common law fiction of legal identity between husband and wife is abrogated, the wife may sue her consort for assault and battery. *Johnson v. Johnson*, 201 Ala. 41, 77 So. 335, 6 A. L. R. 1031. The same is true in New Hampshire. *Gilman v. Gilman*, 78 N. H. 4, 95 Atl. 657, L. R. A. 1916B 907.

There is a strong dissenting opinion in the instant case, insisting on the retention of the common law construction, and the criminal and divorce laws as more fitting remedies for marital difficulties. See 7 VA. LAW REV. 228 for discussion of recent Minnesota case with opposite holding.